



December 14, 2016

Ms. Judith Enck
Regional Administrator, Region 2
U.S. Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

Dear Ms. Enck:

I am writing in response to your letter of November 22, which was a reply to my letter to Administrator Gina McCarthy on September 1, 2016, about the alarming lack of enforcement of federal law in Puerto Rico's municipal landfills, which has been extensively documented by your Agency for over a decade. It is encouraging to read that the EPA shares our concerns about this crisis, but given the dismissive approach and the continuing widespread contamination you even acknowledged in your letter, the EPA's concern is not translating into any effective action. Federal law continues to be flagrantly violated every day at most of our landfills as has been the case since your Agency delegated permitting authority to the Environmental Quality Board (EQB) in 1994. There is no other way to describe this reality other than a dereliction of federal duty.

Your letter stated that the EPA has issued administrative orders and entered into a consent decree that together "address" twelve of Puerto Rico's non-compliant landfills, including two orders issued in September 2016. Your staff has also said publicly, almost always in response to our organization's public criticism, that toxic landfills "can't be closed overnight." The twelve examples you provided in your press statement refer to orders dating back as much as a decade. I have visited every one of the landfills mentioned, as has your own staff. They are ignoring your orders, Ms. Enck, and they are not complying with federal law, and have faced no consequences. There are also many horrendously toxic municipal landfills your Agency has never issued any orders upon, which I know for a fact your Agency has visited as recently as November. Why has the EPA failed to even start actions in those other cases?

You also acknowledge in your letter that after more than 20 years of local permitting authority and over a decade of administrative actions by the EPA, there are still 19 of 29 municipal landfills putting trash in unlined waste cells. I would add, as your own staff has documented,

that most if not all of these landfills also do no due diligence over the waste they accept, so we can't be sure the waste going into those unlined cells is non-hazardous under Subtitle D of the federal Resources Conservation and Recovery Act (RCRA). Furthermore, these illegal practices seem to enjoy immunity from any action beyond the ineffective orders issued by your Agency because you have spent more time defending your failure to protect the public rather than exercising your full authority under federal law.

You also defended your policy as Regional Administrator that the EPA has no legal authority to revoke the adequacy of the EQB's solid waste compliance and enforcement program. Your position since you took office appears to be that no matter how serious and imminent the threat is to human health and the environment from so many non-compliant landfills in Puerto Rico, it's not your responsibility. But, Ms. Enck, your own staff argued both to you and your predecessor that you have that authority, and recommended that you use it.

Region 2 staff not only documented a complete lack of enforcement by the EQB for over a decade, which persists today, but they even documented apparently malfeasance by the Commonwealth of Puerto Rico in changing permitting rules to bring them below minimum standards without notifying your Agency. I have found no evidence that this rule discrepancy was ever rectified. In an internal document from December 2008 that we have made public, your current staff concluded that the EPA could revoke EQB's program approval and "have direct enforcement authority for 40 CFR Part 258 landfill requirements." They added that any issue around EPA having permitting authority in that case could be solved by issuing new rules. This is the kind of action you have refused to take.

You wrote in the letter that your authority is limited to requiring the abatement of imminent and substantial endangerments which you claim you've done. Why, then, are all of the landfills you've taken such action upon still posing imminent and substantial danger to human health and the environment, as my organization has repeatedly shown over the course of the last year?

In all of our investigation under FOIA, I never found one letter from you to the Governor of Puerto Rico raising the subject of the landfill crisis, unlike your predecessor. I have seen a great deal of press releases, however, defending your actions which have had no results. We have also seen an obsession with promoting recycling, despite the fact that recycling rates in Puerto Rico are as abysmally low now as they were when you took office, largely because the landfill crisis has prevented any incentive to flourish for recycling here. It is discouraging that you have not acknowledged the consequences your inaction on landfills has had even on your top priority issue.

You also noted in your letter that beginning in April 2016, the EPA sent letters to landfills under an agency order (but apparently, by your wording, not to all Subtitle D landfills in Puerto Rico, despite your full, documented knowledge of their gross non-compliance) requiring mosquito control plans. The health crisis over the Zika epidemic was declared in February 2016. Why did

your Agency take two months to write a letter about this? You have argued legal limits to your authority over landfills, but nothing in federal law prevents you from writing 29 letters instead of nine about an issue as fundamentally serious as the Zika epidemic in Puerto Rico. Once again, this response showed a lack of understanding of the seriousness of your role in our island's landfill crisis.

So the uncomfortable question arises for me: if the weight of evidence you've had on your desk since you took office was not enough, along with my organization making that evidence public through the Freedom of Information Act, then what exactly will it take for you as Region 2 Administrator to conclude that the EQB's 1994 permitting plan – which has never been acted on – no longer deserves your approval? How many more communities have to be contaminated before you use your full authority to help them?

I regret deeply that it seems that the right answers will never come from your office. It is my hope that your successor will use the full authority of your office to protect our communities from the imminent and substantial dangers they have faced from toxic landfills throughout your term in office.

Sincerely,

A handwritten signature in black ink, appearing to read 'HJ Torres Montalvo', with a stylized flourish at the end.

HIRAM J. TORRES MONTALVO

Co-founder